



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

David P. Littell  
COMMISSIONER

July 7, 2009

Mr Charles Applebee  
6 Church Street  
Gardiner, ME 04345

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102423  
Maine Waste Discharge License #W008074-5T-C-R  
Final Permit – **Town of Randolph**

Dear Mr. Applebee:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL which was approved by the Department of Environmental Protection. Please read the permit and its attached conditions carefully. You must follow the conditions in the permit to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding this matter, please feel free to contact me at (207) 287-7658 or via email at: [phyllis.a.rand@maine.gov](mailto:phyllis.a.rand@maine.gov).

Sincerely,

Phyllis Arnold Rand  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enclosure

Cc: Beth DeHaas, DEP      Roger Janson, EPA      Doug Koopman, EPA  
Sandy Mojica, USEPA      Lori Mitchell, DMU      Jeff Murphy, NMFS

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
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BANGOR  
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PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

**DEPARTMENT ORDER**

**IN THE MATTER OF**

TOWN OF RANDOLPH	)	MAINE POLLUTANT DISCHARGE
RANDOLPH, KENNEBEC COUNTY, ME.	)	ELIMINATION SYSTEM PERMIT
COMBINED SEWER OVERFLOW	)	AND
ME0102423	)	WASTE DISCHARGE LICENSE
W008074-5T-C-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>		

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et Seq. and Maine Law, 38 M.R.S.A., Section 414-A et Seq., and applicable regulations, the Department of Environmental Protection (“Department,” hereinafter) has considered the application of the TOWN OF RANDOLPH, (“Town,” hereinafter) with its supportive data, agency review comments and other related materials on file, and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The Town has applied for renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102423/Maine Waste Discharge License (WDL) #W008074-5T-B-R (“permit,” hereinafter) that was issued on April 8, 2004 and expired on April 8, 2009. The permit authorized the discharge of untreated sanitary waste water and storm water to the Kennebec River, Class B, during wet weather events via one combined sewer overflow (CSO) structure in Randolph, Maine. The CSO structure, identified as Outfall #001, is located on Route 27, Water Street, in Randolph, Maine. See **Attachment A** of this permit for outfall location maps.

**PERMIT SUMMARY**

This permitting action authorizes the Town to discharge untreated sanitary and storm related waste water to the Kennebec River, Class B, during wet weather events via the above-referenced CSO in the Town of Randolph. During certain wet weather events, the sewer system cannot convey all the flow in the collection system to the City of Gardiner’s waste water treatment facility without discharging combined sanitary waste water and stormwater to the river through CSO Outfall #001.

This permit is carrying forward the following requirements from the previous permit:

1. A requirement for an annual “CSO Activity and Volumes” report.
2. The requirement for a yearly “CSO Progress Report” submittal.
3. The requirement to implement CSO abatement projects according to a Department approved schedule, and

## **PERMIT SUMMARY (cont'd)**

4. The requirement to include in the Annual CSO Report, a report of work done on the Nine Minimum Controls during the year.

This permit is requiring the Town of Randolph to continue their efforts to coordinate with the City of Gardiner in the maintenance of a CSO Master Plan and the implementation of the Department-approved CSO flow reduction and abatement schedule.

## **CONCLUSIONS**

BASED on the findings in the attached draft Fact Sheet dated July 7, 2009, including the implementation of the treatment and control measures as specified in the CSO Master Plan (or elimination of the discharge entirely) and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. Pursuant to Department Regulation Chapter 570, *Combined Sewer Overflow Abatement*, the discharge will be subject to the application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the TOWN OF RANDOLPH to discharge combined untreated sanitary waste water and storm water during wet weather events to the Kennebec River, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: March 13, 2009.

Date of application acceptance: March 16, 2009.

This order prepared by Phyllis Arnold Rand, Bureau of Land & Water Quality

ME0102423 2009

## SPECIAL CONDITIONS

### A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO)

1. Pursuant to Chapter 570 of Department Rules (*Combined Sewer Overflow Abatement*), the permittee is authorized to discharge from the following CSO (stormwater and sanitary wastewater) subject to the conditions and requirements herein:

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water &amp; Class</u>
001	Route 27, Water Street	Kennebec River, Class B

2. Prohibited Discharges
  - a) The discharge of dry weather flows is prohibited. All such discharges shall be reported to the Department in accordance with Standard Condition D (1) of this permit.
  - b) No discharge shall occur as a result of mechanical failure, improper design or inadequate operation or maintenance.
  - c) No discharges shall occur at flow rates below the maximum design capacity of the wastewater treatment facility, pumping stations or sewerage system.
3. Narrative Effluent Limitations
  - a) The effluent shall not contain a visible oil sheen, settled substances, foam, or floating solids at any time that impair the characteristics and designated uses ascribed to the classification of the receiving waters.
  - b) The effluent shall not contain materials in concentrations or combinations that are hazardous or toxic to aquatic life; or which would impair the usage designated by the classification of the receiving waters.
  - c) The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated by the classification of the receiving waters.

## **SPECIAL CONDITIONS**

### **A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO)**

4. CSO Master Plan (see Sections 2 & 3 of Chapter 570 Department Rules)

The permittee shall implement CSO control projects in accordance with an approved CSO Master Plan and abatement schedule. The CSO Master Plan entitled, *Revised Action Plan for CSO Abatement for the Town of Randolph*, was approved on February 24, 1999, and the CSO Abatement Master Plan was approved on April 4, 2001. In preparation for submittal of an updated CSO Master Plan, the Town of Randolph is conducting a metering study from March – April 2009 and will issue a Sewer System Evaluation Study shortly thereafter. A draft CSO Master Plan will be submitted to the Department in Fall, 2009, for review. The permittee shall:

**By December 31, 2009, (PCS Code 06699)**, the permittee shall submit to the Department for review and approval **an updated CSO Master Plan** analyzing the effectiveness of the completed abatement projects to date and providing, if necessary, an implementation schedule for additional abatement projects.

To modify the dates and or projects specified in **bold** above (but not dates in the Master Plan), the permittee must file an application with the Department to formally modify this permit. The work items identified in the abatement schedule may be amended from time to time based upon written approval by the Department. The permittee must notify the Department in writing prior to any proposed changes to the implementation schedule.

5. Nine Minimum Controls (NMC) (see Section 5, Chapter 570 of Department Rules)

The permittee shall implement and follow the Nine Minimum Controls documentation. Work performed on the Nine Minimum Controls during the year shall be included in the annual CSO Progress Report (see below).

6. CSO Compliance Monitoring Program (see Section 6, Chapter 570 of Department Rules)

The permittee shall conduct flow monitoring on Outfall #001 according to a Department-approved *Compliance Monitoring Program*, as part of the CSO Master Plan. Overflow volumes shall be measured.

**Results of the monitoring program shall be submitted annually as part of the annual CSO Progress Report** (see section A(7) below), and shall include annual precipitation and dates of CSO events. Any abnormalities during CSO monitoring shall also be reported. The results shall be reported on the Department form, “CSO Activity and Volumes” (**Attachment B** of this permit) or similar format and submitted to the Department electronically.

CSO control projects that have been completed shall be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement shall not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.

## **SPECIAL CONDITIONS**

### **A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO) (cont'd)**

7. Annual CSO Progress Reports (see Section 7 of Chapter 570 of Department Rules)

**By March 1 of each year**, the permittee shall submit *CSO Progress Reports [PCS 11099]* covering the previous calendar year (January 1 to December 31). The CSO Progress Report shall include, but is not necessarily limited to, the following topics as further described in Chapter 570: CSO abatement projects, schedule comparison, progress on inflow sources, costs, flow monitoring results, CSO activity and volumes, nine minimum controls update, sewer extensions, and new commercial or industrial flows.

The CSO Progress Reports shall be completed on a standard form entitled "Annual CSO Progress Report", furnished by the Department, and submitted in electronic form to the following address:

CSO Coordinator  
Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, Maine 04333  
e-mail: [CSOCoordinator@maine.gov](mailto:CSOCoordinator@maine.gov)

8. Signs

The permittee shall maintain identification signs at the CSO location as notification to the public that intermittent discharges of untreated sanitary wastewater occur. The signs must be located at or near the outfalls and be easily readable by the public. The signs shall be a minimum of 12" x 18" in size with white lettering against a green background and shall contain the following information:

**TOWN OF RANDOLPH  
WET WEATHER  
SEWAGE DISCHARGE  
OUTFALL # AND NAME**

## **SPECIAL CONDITIONS**

### **A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO) (cont'd)**

#### **9. Definitions**

For the purposes of this permit, the following terms are defined as follows:

- a. Combined Sewer Overflow - a discharge of excess waste water from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt.
- b. Dry Weather Flows - flow in a sewerage system that occurs as a result of non-storm events or are caused solely by ground water infiltration.
- c. Wet Weather Flows - flow in a sewerage system that occurs as a direct result of a storm event, or snowmelt in combination with dry weather flows.

### **B. UNAUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, but shall be reported in accordance with Standard Condition B(5)(Bypass) of this permit.

### **C. REOPENING OF PERMIT FOR MODIFICATIONS**

Upon evaluation of the data and information required by Special Conditions of this permitting action, new site specific information, or any other pertinent information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to require additional monitoring, inspections and/or reporting based on the new information.

### **D. SEVERABILITY**

In the event that any provision(s), or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.



# **ATTACHMENT A**

# Randolph Pump Station & CSO Outfall



Pump  
Station

ELM ST  
SOUTH MAPLE ST  
CALEBS LN

RTE 226

PINE ST

RTE 27

KINDERHOOK ST

Randolph  
CSO  
Location

Kennebec River  
Class B

RIVER AVE





# Town of Randolph Sewer Lines and CSO Location



## **ATTACHMENT B**

**ATTACHMENT B**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**CSO ACTIVITY AND VOLUMES**

MUNICIPALITY OR DISTRICT: <b>TOWN OF RANDOLPH</b>				<div style="border: 1px solid black; padding: 2px;">MEPDES / NPDES PERMIT NO.</div> <div style="border: 1px solid black; padding: 2px;">SIGNED BY:</div> <div style="border: 1px solid black; padding: 2px;">DATE:</div>							
REPORTING YEAR											
YEARLY TOTAL PRECIPITATION INCHES											
CSO EVENT NO.	START DATE OF STORM	PRECIP. DATA		FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY("1")							
		TOTAL INCHES	MAX. HR. INCHES	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	EVENT OVERFLOW GALLONS	EVENT DURATION HRS
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
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21											
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23											
24											
25											
	TOTALS										

Note 1: Flow data should be listed as gallons per day. Storms lasting more than one day should show total flow for each day.

Note 2: Block activity should be shown as a "1" if the block floated away.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: **July 7, 2009**

PERMIT NUMBER: **ME0102423**

LICENSE NUMBER: **W008074-5T-C-R**

NAME AND ADDRESS OF APPLICANT:

**TOWN OF RANDOLPH  
121 Kinderhook Street  
Randolph, ME 04346**

COUNTY: **Kennebec County**

NAME AND LOCATION WHERE DISCHARGE OCCURS and  
RECEIVING WATER/CLASSIFICATION:

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water &amp; Class</u>
001	Route 27, Water Street	Kennebec River Class B

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Charles Applebee, Grade V-B  
6 Church Street  
Gardiner, ME 04345  
(207) 582-1351  
wwtp@gardinermaine.com**

**1. APPLICATION SUMMARY**

- a. Application: The Town of Randolph ("Town") has applied for renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit # ME0102423/Maine Waste Discharge License (WDL) #W008074-5T-B-R ("permit," hereinafter) that was issued on April 8, 2004 and expired on April 8, 2009. The permit authorized the discharge of combined untreated sanitary waste water and storm water to the Kennebec River, Class B, during wet weather events via one combined sewer overflow (CSO) structure (Outfall #001) on Route 27, Water Street, in Randolph, Maine.

## 2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action authorizes the Town to discharge untreated sanitary and storm related waste water to the Kennebec River, Class B, during wet weather events via the above-referenced CSO in the Town of Randolph. During certain wet weather events, the sewer system can not convey all the flow in the collection system to the City of Gardiner's waste water treatment facility without discharging combined sanitary waste water and stormwater to the river through the CSO.

This permit is carrying forward the following requirements from the previous license:

1. A requirement for an annual "*CSO Activity and Volumes*" report,
2. The requirement for a yearly CSO progress report submittal,
3. The requirement to implement CSO abatement projects according to a Department approved schedule, and
4. The requirement to include in the annual CSO report, a report of work done on the Nine Minimum Controls during the year.

This permit is requiring the Town of Randolph to continue their efforts to coordinate with the City of Gardiner in the maintenance of a CSO Master Plan and the implementation of the Department-approved CSO flow reduction and abatement schedule.

- b. History: The most recent licensing/permitting actions include the following:

*November 12, 1998* – The Town of Randolph submitted an application for the discharge of combined storm water and untreated sanitary waste water from one CSO namely Outfall #001 on Route 27, Water Street, in Randolph, Maine.

*January 20, 1999* – The Town submitted a CSO Master Plan Scope of Work entitled, *Revised Action Plan for CSO Abatement for the Town of Randolph*, which included references to equipment to be installed and monitoring to be conducted to reduce or eliminate the CSO events.

*February 24, 1999* – The Department approved the January 20, 1999 CSO Master Plan Scope of Work.

*March 19, 1999* – The Department issued WDL #W008074-5T-A-N. The WDL required the Town to implement the Nine Minimum Controls Strategy, conduct monthly inspections of the flow meters at the outfall location, record the meter operation, identify any maintenance needed and to annually submit a report documenting the CSO occurrences, block data, and other measures to abate or eliminate CSO events.

## 2. PERMIT SUMMARY (cont'd)

*January 12, 2001* – The State of Maine received authorization from the EPA to administer the NPDES permitting program in Maine. From this date forward the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.

*April 4, 2001* – The Department approved the Town's Sewer Rehabilitation Project in accordance with the CSO Abatement Master Plan.

*April 8, 2004* – The Department issued combination MEPDES permit #ME0102423/WDL W008074-5T-B-R for a five-year term.

*March 16, 2009* – The Town submitted a complete and timely application to the Department for renewal of the 4/08/04 MEPDES permit.

- c. Source/Treatment: The Town's sewer collection system at the Route #27/Water Street CSO location has a pump station easterly of Route 27 (adjacent to the municipal fire station) and the CSO structure on the westerly side of Route 27. The pump station is equipped with an alarm system which sends a signal to the Town office (or to a security service that then contacts the Town via a pager system) during malfunctions of the pump station. Staff from the Town inspect the pump station flow monitoring equipment daily to ensure adequate performance. The CSO structure contains a manhole that was modified in November 1998 to include a precast concrete riser section with a 12" diameter PVC pipe. The pipe daylights at a point on the bank of the Kennebec River in an area that was riprapped to prevent soil erosion. Certain other improvements have been made to the CSO structure since 1998. During extraordinary rainfall events, inflow/infiltration (I&I) and some storm water runoff inundate the sewer collection system and as a result, untreated sanitary waste water combined with untreated storm runoff is discharged to the Kennebec River via the CSO covered by this permit.

The EPA has adopted a National Combined Sewer Overflow Control Policy that strives to: 1) accurately characterize combined collection systems through sampling, monitoring and modeling; 2) implement best management practices as described in its Nine Minimum Controls Strategy and; 3) develop a long term control plan often referred to as a Master Plan.

A CSO Master Plan dated January 20, 1999 for the Town of Randolph has been accepted and approved by the Department. The Plan evaluates and prioritizes storm water/sewer separation projects in Randolph that will result in reduced CSO flows and/or the elimination of CSO Outfall #001.



## **2. PERMIT SUMMARY: (cont'd)**

- c. Summary of CSO Activity: During 2001 and 2002, the Town hired the engineering firm of A.E. Hodson to design and install replacement sewers and manholes, resulting in approximately 11,000 linear feet of replacement PVC sewer pipe and over 50 manholes.

The Town has developed an ordinance prohibiting the discharge of sump pumps and drains to the sanitary sewer, and has nearly completed a comprehensive inspection and removal campaign. In 2008, the Town reported an average discharge of 157,000 gallons per day during five CSO events, with a maximum discharge of 411,000 gallons per day on 4/29/08.

The Town conducted a metering study from March 2009 – April 2009 and will issue a Sewer System Evaluation Study shortly thereafter. Upon Town Meeting approval, the Town plans on sending a Pump Station Upgrade Project out for bid in July 2009; anticipated date of commencement of construction in early August 2009; construction completion by October 2009. A draft CSO Master Plan, which will include the proposed work on the pump station, will be submitted to the Department in September 2009 and a final CSO Master Plan will be submitted to the Department in December 2009.

## **3. CONDITIONS OF PERMITS**

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

## **4. RECEIVING WATER QUALITY STANDARDS**

Maine Law, 38 M.R.S.A., Section 467(4)(A)(13) states that at the point of discharge, the Kennebec River is classified as a Class B waterway. Maine Law, 38 M.R.S.A., Section 465(3) contains the classification standards for Class B waterways.

## **5. RECEIVING WATER QUALITY CONDITIONS**

The Kennebec River, at and below the Town of Randolph's discharge, is listed in tables entitled, *Category 4-B: Rivers And Streams Impaired By Pollutants- Pollution Control Requirements Reasonably Expected To Result in Attainment* and *Category 5-D: Rivers and Streams Impaired By Legacy Pollutants*, in a report entitled, 2008 Integrated Water Quality Monitoring and Assessment Report prepared by the Department pursuant to Sections 305(b)

## **5. RECEIVING WATER QUALITY CONDITIONS (cont'd)**

and 303(d) of the Federal Water Pollution Control Act. Both tables indicate the impairment is due to historic discharges of dioxin and PCB's. The Department is not aware of any information nor does it have reason to believe the discharge from the CSO in the Town of Randolph is causing or contributing to this impairment.

The Kennebec River in Randolph is also listed in a table entitled *Category 5-B: Rivers and Streams Impaired by Bacteria Contamination (TMDL Required)* in the 305(b) report. The impairment is due in part to the periodic discharges of untreated sanitary waste water from the CSO in Randolph. See Section 7, *Discharge Impact on Receiving Water Quality*, of this Fact Sheet.

## **6. EFFLUENT LIMITATIONS/MONITORING REQUIREMENTS**

No effluent limitations have been established in this permitting action for the CSO discharge. Best practicable treatment (BPT) of CSO discharges includes control through best management practices and abatement of the discharge as specified in Chapter 570 of Department Rules (Combined Sewer Overflow). The permittee is required to measure and report annually CSO flow volumes and CSO discharge events.

## **7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing water uses will be maintained and protected. The Department acknowledges that total elimination of the overflow is a costly, long-term project. With implementation of the CSO Master Plan and its revisions, the Nine Minimum Control measures and associated best management practices, the Department anticipates a reduction in overflow events (with eventual elimination) and further improvement in water quality.

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the *Kennebec Journal* newspaper on or about March 10, 2009. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## 9. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from, and written comment should be sent to:

Phyllis Rand  
Division of Water Quality Management  
Bureau of Land and Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333  
[phyllis.a.rand@maine.gov](mailto:phyllis.a.rand@maine.gov)  
Telephone (207) 287-7658

## 10. RESPONSE TO COMMENTS

During the period of May 20, 2009, through June 19, 2009, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to the Town of Randolph for the proposed discharge. The Department received one significant comment (Comment #1) on the draft permit from the National Marine Fisheries Services (NMFS) and one minor comment (Comment #2) from the permittee. The comments and Department responses are as follow:

### **Comment #1:**

We have reviewed the draft permit and recommend that the M[E]DEP include a permit condition that requires an annual monitoring program (Whole Effluent Toxicity and chemical specific) of CSO discharges to the Kennebec River. According to the EPA, CSO[']s have been shown to be a major contributor to use impairment and aesthetic degradation of many receiving waters and have contributed to shellfish harvesting restrictions, beach closures, and even occasional fish kills. This data is extremely important for NMFS to understand any adverse effects of CSO discharges at the Town of Randolph to listed shortnose sturgeon and Atlantic salmon in the Kennebec River.

### **Department Response to Comment #1:**

On April 30, 2003, the Department sent NMFS information on a similar CSO discharger to the Kennebec River located approximately 5 miles upstream of the Randolph CSO. The information included: 1) 60 months' worth of effluent data for each waste water treatment facility discharging to the Kennebec River, 2) a statistical evaluation of the most recent 60 months' worth of whole effluent toxicity and priority pollutant testing data for each facility, 3) a spreadsheet with the annual volumes and frequency of occurrence of each CSO for each community, and 4) maps and annotated aerial photographs identifying the locations of each waste water treatment facility, each permitted/licensed CSO and major dams on the river. The Department did not receive feedback from NMFS indicating the CSO discharges were impacting the shortnose sturgeon.

## **10. RESPONSE TO COMMENTS (cont'd)**

There were only five CSO events from the Town of Randolph's CSO in 2008. Given the infrequent nature, small volume of wastewater discharged and the fact that the Department does not require Whole Effluent Toxicity or chemical-specific monitoring of other CSO discharges, the Department finds that the data generated at one of the smallest CSO structures in the State would be of little value. Additionally, the Department has not received information from NMFS indicating the Town of Randolph's CSO discharges are impacting the shortnose sturgeon.

With implementation of the CSO Master Plan and its revisions and the Nine Minimum Control measures and associated best management practices, the Department anticipates a reduction in overflow events (with eventual elimination) and further improvement in water quality.

### **Comment #2:**

The Town of Randolph submitted additional information on projects undertaken in an effort to reduce CSO events.

### **Department Response to Comment #2:**

The Department incorporated the additional information into Item 2.c of the Fact Sheet.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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CONTENTS

SECTION	TOPIC	PAGE
A	GENERAL PROVISIONS	
1	General compliance	2
2	Other materials	2
3	Duty to Comply	2
4	Duty to provide information	2
5	Permit actions	2
6	Reopener clause	2
7	Oil and hazardous substances	2
8	Property rights	3
9	Confidentiality	3
10	Duty to reapply	3
11	Other laws	3
12	Inspection and entry	3
B	OPERATION AND MAINTENANCE OF FACILITIES	
1	General facility requirements	3
2	Proper operation and maintenance	4
3	Need to halt reduce not a defense	4
4	Duty to mitigate	4
5	Bypasses	4
6	Upsets	5
C	MONITORING AND RECORDS	
1	General requirements	6
2	Representative sampling	6
3	Monitoring and records	6
D	REPORTING REQUIREMENTS	
1	Reporting requirements	7
2	Signatory requirement	8
3	Availability of reports	8
4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
5	Publicly owned treatment works	9
E	OTHER PROVISIONS	
1	Emergency action - power failure	9
2	Spill prevention	10
3	Removed substances	10
4	Connection to municipal sewer	10
F	DEFINITIONS	10

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**7. Oil and hazardous substances.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

**8. Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

**9. Confidentiality of records.** 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

**10. Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

**11. Other laws.** The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee of its obligation to comply with other applicable Federal, State or local laws and regulations.

**12. Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## **B. OPERATION AND MAINTENANCE OF FACILITIES**

### **1. General facility requirements.**

- (a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

**2. Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**3. Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**4. Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **5. Bypasses.**

#### (a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

#### (c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### C. MONITORING AND RECORDS

**1. General Requirements.** This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

**2. Representative sampling.** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

### **3. Monitoring and records.**

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
  - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
  - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- (ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

- (B) Any upset which exceeds any effluent limitation in the permit.

- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

- (iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

**2. Signatory requirement.** All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

**3. Availability of reports.** Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

**4. Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (i) One hundred micrograms per liter (100 ug/l);

- (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

- (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

- (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) Five hundred micrograms per liter (500 ug/l);
  - (ii) One milligram per liter (1 mg/l) for antimony;
  - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

#### **5. Publicly owned treatment works.**

- (a) All POTWs must provide adequate notice to the Department of the following:
  - (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
  - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

#### **E. OTHER REQUIREMENTS**

**1. Emergency action - power failure.** Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**2. Spill prevention.** (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminants and shall specify means of disposal and or treatment to be used.

**3. Removed substances.** Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department.

**4. Connection to municipal sewer.** (applicable only to industrial and commercial sources) All wastewaters designated by the Department as treatable in a municipal treatment system will be cosigned to that system when it is available. This permit will expire 90 days after the municipal treatment facility becomes available, unless this time is extended by the Department in writing.

**F. DEFINITIONS.** For the purposes of this permit, the following definitions shall apply. Other definitions applicable to this permit may be found in Chapters 520 through 529 of the Department's rules

**Average** means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For bacteria, the average shall be the geometric mean.

**Average monthly discharge limitation** means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

**Average weekly discharge limitation** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

**Best management practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Composite sample** means a sample consisting of a minimum of eight grab samples collected at equal intervals during a 24 hour period (or a lesser period as specified in the section on monitoring and reporting) and combined proportional to the flow over that same time period.

**Continuous discharge** means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

**Daily discharge** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**Discharge Monitoring Report ("DMR")** means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

**Flow weighted composite sample** means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

**Grab sample** means an individual sample collected in a period of less than 15 minutes.

**Interference** means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

**Maximum daily discharge limitation** means the highest allowable daily discharge.

**New source** means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

**Pass through** means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

**Permit** means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR parts 122, 123 and 124. Permit includes an NPDES general permit (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

**Person** means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**Point source** means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

**Pollutant** means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**Process wastewater** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

**Publicly owned treatment works ("POTW")** means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

**Septage** means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

**Time weighted composite** means a composite sample consisting of a mixture of equal volume aliquots collected over a constant time interval.

**Toxic pollutant** includes any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

**Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Whole effluent toxicity** means the aggregate toxic effect of an effluent measured directly by a toxicity test.





# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

## **II. APPEALS TO MAINE SUPERIOR COURT**

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

#### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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